

# Seeking victims' perspective on remedy: the case of Brasil Verde Farm's workers

EM BUSCA DA PERSPECTIVA DAS VÍTIMAS SOBRE REPARAÇÃO:  
O CASO DOS TRABALHADORES DA FAZENDA BRASIL VERDE

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## Abstract

The awareness that slavery did not disappear with abolition has brought back discussions about dichotomies and tensions that were left unresolved in the context of the abolition. Remedy for people that were enslaved is among these unresolved issues. Brazil became one of the first countries to recognize the existence of contemporary slavery. However, when workers are rescued by government's agents from slave labor, remedy measures seem inadequate to guarantee that they will surpass the vulnerabilities that lead them to be exploited in the first place. To understand the challenges preventing the effectiveness of the remedy system, this article relies on the collaboration with workers from Barras (Piauí), that were subjected to slave labor in the Brasil Verde Farm. The workers' narratives – collected through oral history methodology, during a fieldtrip to Piauí, in March 2016 –, help to overcome the ongoing debate on remedy studies related to the discourse of victims' "wants and needs", and reveal that any reparation measure that intend to promote social emancipation has to deal with the absences of the right to participation, security, adequate standards of living, health, adequate housing, education, and also access to land.

## Keywords

Contemporary slavery; remedy; rural workers; business and human rights; oral history; victims' perspective.

## Resumo

A consciência de que a escravidão não desapareceu com a abolição trouxe de volta discussões sobre dicotomias e tensões que foram deixadas sem solução no contexto da abolição. A reparação para as pessoas que foram escravizadas está entre estas questões mal resolvidas. O Brasil se tornou um dos primeiros países a reconhecer a existência da escravidão contemporânea. No entanto, quando esses trabalhadores são resgatados do trabalho escravo por agentes do governo, as medidas de reparação parecem inadequadas para garantir que eles superarão as vulnerabilidades que os levaram a serem explorados inicialmente. Para compreender os desafios que impedem a efetividade do sistema de reparação, este artigo conta com a colaboração com trabalhadores de Barras (Piauí), que foram submetidos ao trabalho escravo na Fazenda Brasil Verde. As narrativas dos trabalhadores – coletadas através da metodologia história oral, durante uma viagem em março de 2016 –, ajudam a superar o debate em curso nos estudos sobre reparações relacionado com o discurso dos "desejos e necessidades" das vítimas, e revelam que qualquer medida de reparação que pretenda promover emancipação social, tem de lidar com as ausências do direito à participação, segurança, padrões de vida adequados, saúde, habitação adequada, educação e o direito à terra.

## Palavras-chave

Escravidão contemporânea; reparação; trabalhadores rurais; direitos humanos e empresas; história oral; perspectiva das vítimas.

## I INTRODUCTION

In the past two decades, the word slavery jumped out of the history books to the pages of the newspapers. Stories about women, children and men who were held in captivity by forced labor, debt bondage, sexual exploitation have put in check the belief which is still taught in schools all around the world that modern society, enlightened by the spirit of capitalism, managed to abolish slavery. It is true, that in legal terms slavery was indeed abolished. Since Slavery Convention of 1926, there has been underway a consensus that no one should be held in slavery or servitude and that the slavery and slave trade must be prohibited in all their forms (UNITED NATIONS, 1948).

However, recent key figures show that the enforcement of these regulations has failed. Firstly, there is not a clear answer about the number of people living under different forms of slavery nowadays. While the International Labor Organization (ILO, 2016) projects that almost 21 million people are victims of forced labor, the U.S. State Department believes that every year more than 820 million people are victims of international trafficking (BRYSK; CHOI-FITZPATRICK, 2012). The non-government organization (NGO) Free the Slaves (2016), on the other hand, considers that slavery affects between 21 to 36 million worldwide, generating US\$ 150 billion each year in illicit profits. The sad outcome is that the “freedom” long ago celebrated by the Slavery Convention seems not enough to guarantee human dignity.

The fight against the transatlantic slave trade in the nineteenth-century has been considered one of the most successful episodes in the history of international human rights law, as it has put slavery and the slave trade among the few acknowledged crimes against humanity (MARTINEZ, 2012). Nowadays, the awareness that slavery did not disappear with abolition has brought back discussions about dichotomies and tensions that were left unresolved in the context of the abolition (MARTINEZ, 2012). Remedy (redress, relief) – defined by the Oxford Dictionary of Law as “any of the methods available at law for the enforcement, protection, or recovery of rights or for obtaining redress for their infringement” (LAW, 2016) – is among these unresolved issues.

On May 13, 1888, Brazil became the last nation in the Western world to abolish slavery. After that process, there was an expectation that the former slaves would be integrated into the free work market. However, the destiny of this group was no longer a priority as a public policy. Nobody assumed responsibility for including those people into the free market. At the same time, landowners turned to their own interests, which meant trying to get indemnity for financial losses with the abolition of their once valuable property, arguing that it had provoked a crisis in the farming business. They did not succeed in their claims (FERNANDES, 2013; COSTA, 2010). But remedy for the former slaves, such as in form of access to education, justice, health, employment or land, and financial compensation, was supposed to be an aspect of the abolition that did not happen in the past, and, in different ways, it is not happening in the present either.

The echoes of May 13, 1888, regarding what happened after the freedom of slaves, are still visible in the Brazilian society. Although 53% of Brazilians are black or brown (PNAD, 2015), this population is more likely to be exposed to a systemic violence,<sup>1</sup> poverty,<sup>2</sup> lack of quality in education, poor access to health, lower income and job opportunities.<sup>3</sup>

Brazil has been trying to overcome past mistakes. The country was one of the first to recognize the existence of contemporary forms of slavery in 1995, and to establish a system to combat contemporary slavery, based on a series of initiatives such as social programs to combat starvation,<sup>4</sup> the National Plans for the Eradication of Slave Labor and the Dirty List, an instrument to disclose the name of companies involved in slave labor. Another important initiative was the creation of the Special Mobile Inspection Group (GEFM). Combining efforts of labor inspectors, prosecutors and police officers, the GEFM investigates complaints of slave labor even in remote areas. The group has the responsibility to release the workers from companies abuses, mainly in farms,<sup>5</sup> garment industries and construction sites, establishing reparations and prosecuting the owners of these enterprises that violated human rights (REPÓRTER BRASIL, 2015; ILO, 2011). Over 20 years, the special group has held 1,928 operations in 4,302 commercial enterprises and has released 50,363 people. The government also paid R\$ 95.8 million (€ 12,975<sup>6</sup>) in indemnity to the workers (BRAZIL, 1995-2015).

A lot has been done in a short period of time and Brazil has become world reference in the combat of contemporary slavery (COSTA, 2009; ALBUQUERQUE, 2014). However, there is a gap between policy and practice. After the rescue, the reparation under the labor rights compensation, provided by public officials, seems not to be enough to break the cycle

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<sup>1</sup> In 2012, 56,000 people were murdered in Brazil. Among the dead are 30,000 young people between 15 and 16 years old. The African Brazilians represent 77% of this population (AMNESTY INTERNATIONAL, 2015).

<sup>2</sup> Brazilian Census 2010 shows 16.2 million people living in extreme poverty (about 8.5% of the country's population). Among this population, 70.8% are black (SPULDAR, 2011).

<sup>3</sup> The Census 2010 shows that the percentage of illiterate between black (14.4%) and brown (13.0%) was in 2010 almost triple the whites (5.9%) (IBGE, 2013). Researches also show that blacks and browns people are concentrated in the most poorly paid occupations and lower education tracks in Brazil (CHAGAS, 2005).

<sup>4</sup> The cash transfer programme Bolsa-Família, established in 2003, manage to take out of extreme poverty 36 million people in Brazil (PORTAL BRASIL, 2013)

<sup>5</sup> The agribusiness sector represented 68% (479 workers rescued) of slave labor's cases in 2015. Agribusiness encompasses deforestation (1% of the cases), reforestation (6%), cattle farming (29%), vegetal extraction (5%), sugarcane (1%), charcoal (7%), among other types of farming (19%). In addition to agribusiness, the construction industry holds 13% of the cases in 2015, followed by the garment industry (4%) and the mineral extraction (3%). The difference is represented by other minors industries (PLASSAT, 2015).

<sup>6</sup> All the exchanges in this article are purely illustrative, based on rates of May 2016.

of contemporary slavery. The government inspection frees people from slave labor but the social and economic vulnerabilities that cause slavery do not end there and people end up in vulnerable conditions again. Is possible to go beyond the regulation to promote the emancipation of the workers from slave labor?

Following the case of Brazil Verde Farm workers, this article aims at showing through the victim's perspective the challenges preventing the effectiveness of the right to remedy. In order to do that, I have chosen to prioritize interviews with the workers subjected to slave labor as the main source of data. To reach the workers, I relied on human rights activists that work in different areas related to slave labor, to help me find and invite them to collaborate in the research. The interviews were made during a field trip to Barras, Piauí, on 26th March 2016, where I met seven rural workers willing to share their stories and experience on searching for remedy – Luiz Doca, Dona Moça, Conrado, Gonçalo, Pitanga and Diogo.<sup>7</sup> The visit was organized by the Pastoral Commission of Land (CPT) that fights for the promotion of human rights of vulnerable rural workers and eradication of slavery labor. CPT develops an important work in regions where the State fails to fulfill their obligations.

Through the voices of these workers, it was possible to reveal absences – defined as a lack of practice of rights –, related to what is missing and why is it missing that prevents the policy of remedy to succeed. Following Boaventura de Sousa Santos' Sociology of Absence and Emergency, the aim was to demonstrate that “what does not exist is actively produced as non-existent, as a non-believable alternative, a disposable alternative, invisible to the hegemonic reality of the world” (SANTOS, 2002, p. 246).

The narratives of the workers were recorded following the thematic genre of oral history, which is different from the life story genre. The acts of “conduct” or “encourage” are the main difference between both genres. While in the first one, the narrator is conducted to answer specificities related to events in his/her life, in the later one, the interviewer avoids conducting to encourage a freer expression of memory (MEIHY; RIBEIRO, 2011, p. 89).

It is important to emphasize that although interviews provide enough information to make an analysis about the challenges of the remedy process, there are some facts related to more accurate dates and places, government's work and court decision that cannot rely only on the narratives. In order to fill these gaps, documents such as governments' statements, statistics, court decisions, newspaper articles, videos and even academic papers related to the cases under study are being used to support the workers' narratives.

This article is divided in five sections. Following the Introduction, where the problem of the contemporary slavery and remedy in a historical perspective was presented, sections two and three present a literature review of the main theoretical debates relating to the concept

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7 It was the workers' decision to have their real names and nicknames published.



of slavery and also the theoretical debates on the discourse of “wants and needs” of victims of human rights violations in cases of remedy. In section four, I propose to use the workers’ narratives as an instrument connecting the theory and the practice of the remedy process. In order to do that, I follow a model of investigation proposed by Boaventura de Sousa Santos, the sociology of absence and emergencies. In section five, I will present the narrative of workers enrolled in the case “Brasil Verde Farm Workers v. Brazil in the Inter-American Court on Human Rights (ICHR)”. In conclusion, I intend to make a discussion in how to transform these absences in emergencies to understand which challenges are preventing the effectiveness of the remedy system in Brazil.

## 2 THEORETICAL STUDIES ON CONTEMPORARY SLAVERY

A new interdisciplinary field of studies in contemporary slavery has emerged in the past 20 years with the task to build a broad understanding of the new system of enslavement, and also to make a connection among the voices of victims, human rights activists, policy makers and academics (CHOI-FITZPATRICK, 2012). It is a huge task since the complex phenomena of contemporary slavery cannot fit into one single perspective. It covers different aspects of exploitation, such as sexual and labor trafficking, hereditary slavery, chattel slavery, children slavery, forced labor, temple servitude, debt bondage, war slavery, religion-based slavery, among others (CHOI-FITZPATRICK, 2012; BALES, 2012). A wave of publications supported by an advocacy strategy is focusing on helping to increase public awareness and promote debates in different theoretical perspectives such as the historical and sociological dimensions of contemporary slavery (BALES, 2012; QUIRK, 2012; MARTINS, 2014; SCOTT, 2013; CAMPOS, 2011); slavery and the global capitalist system (SAKAMOTO, 2011; ANKER, 2004); migration and slavery (ALVES; NOVAES, 2011; ROCHA, 2015); law and slave labor (MARTINS, 2014; ANDRADE; BARROS, 2013; MENDES, 2013).

One specific topic plays an important role among all these theoretical dimensions: the conceptualization of contemporary slavery. Opponents of legal recognition of the modern enslavement as crime have been accusing researchers and human rights activists of anachronism by the use of the word slavery in the present days (SCOTT, 2013). In Brazil, for example, it is common the argument that there is an ideological bias towards an agrarian reform in the use of slavery in cases of “irregular conditions of work”, which would be a strategy to combat the agribusiness industry (RESENDE, 2009). Opponent<sup>8</sup> of the existence

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8 There are also researchers that consider that the word “slavery” should be reserved to discussions related to the Atlantic slave trade (ANKER, 2004, p. 19). This position is related to the ongoing struggle of African communities for recognition of the historical violation they have suffered, and also the search for reparation for victims’ heirs (VAN BUEREN, 2004).

of contemporary slavery have been using a literal interpretation of the term “slave work”, related specifically to the *modus operandi* of black slave trade to try to influence public policies.<sup>9</sup>

In this context, it is crucial to define the differences between irregular working conditions and contemporary slavery. While the first is related to economical enterprises that take advantages of people in vulnerable situation to violate their labor rights; the latter, despite also having elements of irregular working conditions, is based on “physical and moral coercion of the worker, subjected to violence, repression, punishments, humiliation and intimidation” (MARTINS, 2014, p. 208). However, different national legislations can have different interpretation over this matter. One aspect of slavery, the trafficking of a person, for example, is considered by some governments as an immigration issue (ANKER, 2004).

Furthermore, it is also important to understand the characteristics that differs the “new” (contemporary) and “old” (black) slavery. Kevin Bales has the most widely spread research in this subject. He explains that after the Second Great War, several factors affected traditional societies way of living, such as the demography explosion, from two billion people to more than six billion, and social and economic changes brought by modernity and globalization. No work opportunities, lack of resources, and the increasingly search for profit made people desperate and life cheap (BALES, 2012).

Nowadays, to buy a person is no longer a major investment as in old times. In the historic slavery, profits were related to the guarantee of the slave’s survival, which means that, besides the large investment to buy the slave, it was also necessary to maintain the “property”. Nowadays, once the ethnic difference based on racism seems not to be as relevant as it was in the past, there is an abundance of poor and vulnerable people to be exploited by the modern slaveholders. The common denominator for Bales is poverty, not color (BALES, 2012). However, in Brazil, due to the historical lack of remedy after abolition, the black population is in the most vulnerable position to be exploited.

Bales’ sociological perspective is not a consensus. While using a more historical approach to understand the phenomena of contemporary slavery, Joel Quirk criticizes the separation between “new” and “old”. He believes that most “contemporary forms of slavery can be understood as an extension and/or reconfiguration of the enduring historical themes rather than distinctively modern development” (QUIRK, 2012, p. 41). He argues that, although recent macro and micro transformations are affecting the character and the *modus operandi* of slavery, the chattel slavery found in Mauritania, human bondage in Ghana, and even slavery in the cocoa plantations in West Africa have colonial roots.

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9 In Brazil, for example, the rural caucus proposed the Law Project 3842/2012 to try change the definition of contemporary slavery in the national law. The project is under evaluation in the Brazilian Congress, where the caucus has almost 40% of the deputies.

Marxist researchers also take a different route to explain the endurance of slavery and its concept over time. Martins (2014) defends that slavery is an anomaly in relation to the social achievements and values of the modern societies that was conceived through a vast process of primitive accumulation. Following the same path, Sakamoto (2011) explains slavery as an instrument of capitalism to increase companies' competitiveness, seeking the logic of accumulation.

Regardless contemporary slavery being related to the colonial roots (QUIRK, 2012), poverty (BALES, 2012), anomaly of the capitalist system (MARTINS, 2014) or an incomplete modernization (SAKAMOTO, 2011), nowadays another aspect, the lack of practice of rights, can also lead a person to contemporary forms of slavery. A testimony of Marcelo Campos, a labor inspector and human rights activist, can help to understand this perspective. Campos (2011) explained that the new slave is a citizen deprived of the rights that would guarantee his fundamental dignity.

## 2.1 LEGAL PERSPECTIVE OF HUMAN RIGHTS AND CONTEMPORARY SLAVERY

In legal perspective, some researchers defend that, once slavery ceases to be legal, it is only possible to talk about conditions analogous to slavery. The Brazilian law follows this principle. According to Article 149 of the Brazilian Penal Code (BRAZIL, 1940), condition analogous to slavery means that the worker has been subjected to an exhausting workday or degrading conditions,<sup>10</sup> restriction of movement, debt bondage, confiscation of documents, and strict surveillance with the goal of detaining the workers. The penalty for the exploitation of slave work is between two to eight years of reclusion.<sup>11</sup>

This definition has been criticized for being too vague, allowing different interpretations, which has made it harder for the police to investigate, and easier for individuals and companies to escape. These concerns were brought to the UN Special Rapporteur on contemporary forms of slavery, Gulnara Shahinian. While visiting Brazil in 2010, she suggested "the Government should adopt a clearer definition for the crime of slave labor, which would better assist the Federal Police to investigate and file criminal cases against perpetrators of slave labor" (UNITED NATIONS, 2010). However, she also congratulated the country for the

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10 The degrading conditions are characterized by a combination of factors related to: precarious lodging; susceptibility to diseases; inappropriate sanitation conditions; lack of health conditions; non-supply of drinking water; inadequate compensation; child violence and violence; environmental degradation, among others (RIVERO DE ARAUJO; MADURO, 2010, p. 16).

11 Penal Code also determines (Article 203 and 207) (BRAZIL, 1940) the punishment for theft by fraud or violence of the workers' rights, and also the grooming of workers. However, there is no case of individuals being arrested because of exploiting slaver labor.

existence of the “degrading condition’s concept”, which brings a human rights’ perspective for the legislation (ANGELO; MAGALHÃES, 2012).

The United Nations framework does not have a definition of contemporary slavery; it only condemns its practices. The ILO (1930) defines forced labor as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”.

For the purpose of this article, contemporary slavery and modern slavery will be used as synonym of the Brazilian legal concept “conditions analogous to slavery”.

### 3 THE DISCOURSE OF VICTIM’S “WANTS AND NEEDS”

Despite the increase of studies on contemporary slavery, there is a shortage of theoretical studies focused on contemporary slavery and remedy, especially presenting the victims’ perspective. One important ongoing debate on remedy is related to the discourse of victim’s “wants and needs”. Victimology’s studies identify some characteristics of the victim’s “needs” such as: to be able to tell their truth about the violation, to acknowledge the wrongful act to legitimate their feelings; experience real and symbolic restitution; and to be empowered (CULLINAN; BRUCE-MITFORD, 2001). However, not much work has been done in the field of victim’s “wants”.<sup>12</sup> For instance, “presumptions that victims need or demand punitive justice are no more reliable than are the claims that victims are willing to forgive perpetrators who confess” (SIMPSON, 1998, cited in CULLINAN; BRUCE-MITFORD, 2001, p. 20).<sup>13</sup>

Critics on this approach say that assumptions on victim’s “wants and needs” have been influencing public policies without appropriate discussion. Van Boven (1993, cited in CULLINAN; BRUCE-MITFORD, 2001, p. 49),<sup>14</sup> for example, “speculates that many authorities may consider it [to seek victim’s perspective] ‘a complication, an inconvenience and a marginal phenomenon’”. It seems that the potential results of gathering information from victims’ perspectives is not considered relevant enough to justify the effort.

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<sup>12</sup> The Rome Statue (Art. 1975) requires the establishment of “principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation” based on the participation of victims in all “stages of the proceedings determined to be appropriate by the Court” (UNITED NATIONS, 1998).

<sup>13</sup> SIMPSON, Graeme. *A brief evaluation of South Africa’s Truth and Reconciliation Commission: some lessons for societies in transition*. Paper written for the Centre for the Study of Violence and Reconciliation. Johannesburg (1998).

<sup>14</sup> VAN BOVEN, Theo. Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of Human Rights and Fundamental Freedoms. Final Report. U.N. Doc. E/CN.4/Sub.2/1993 (1993).



Nevertheless, assumptions on victim's "wants and needs" have influenced different kinds of remedy, such as the most common one, the compensatory model, which aims to rectify the harm done to a person. "Rectification and compensation in the framework of basic rights served to restore the individuals to the extent possible of their capacity to achieve the ends that they personally value" (SHELTON, 2005, p. 11). One could argue, however, how "personal value" should be defined, and who should define it: the victim or the State agent responsible for the redress? The question can sound tricky, but in practice the answer is quite easy: according to the international law, the State is the one responsible for promoting remedy measures. What is interesting here is to reflect on how effective states measures can be in trying to remedy human rights violations without the participation of the victims.

For instance, when the justice system considers that only compensation is not enough to rehabilitate the victim, other forms of reparation might be put in practice. It is the case of the deterrence approach, focused on trying to prevent a wrong behavior to happen in the future. One example is the re-integrative shaming theory, designed to express community disapproval by naming and shaming the offenders that will be later reintegrated into the community.<sup>15</sup> According to Shelton (2005, p. 14), there is a "correlation between the certainty of consequences and the reduction of offences, but little correlation between the severity of punishment and reduced incidence of wrongdoing".

There are other approaches focusing on trying to overcome the assumption of "needs" towards a practice of victims' "wants". It is the case of the restorative perspective, where perpetrators and those affected by the harm are put together in a process that aims atonement, reconciliation and forgiveness. It focuses not on punishing the perpetrator, but redressing and reintegrating the offender into society (SHELTON, 2005). However, it is also important to remember that ideas of peace and conciliation have ambiguous meaning as political strategy, once they can be influenced by one side's agenda. Aligned with this perspective, Painter (2011) suggests a feminist process-based approach that sees reparation as a public policy to promote social and economic development.

Legal studies on remedy have been following the developing of the human rights framework in the aftermath of the Second Great War. The Nuremberg Trials put rights of individual at the center of the debate towards reparation and accountability within a larger global justice framework (VAN BUEREN, 2004). This choice influenced the development of a dominant approach on remedy in the transnational field, which can be defined by two meanings: a broad juridical one, covering all forms of redress for harms suffered as a consequence of certain crimes, and a narrower one, focused on describing administrative programs, which attempts

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<sup>15</sup> That is the case of the Brazilian Dirty List, a government instrument of naming and shaming companies caught by subjecting people to slavery labor.

to provide benefits directly to the victims (DE GREIFF, 2006). This approach is based on the State responsibility to provide reparation to the harm that has been done, which is ensured by human rights treaties.

The Universal Declaration of Human Rights (UDHR, Art. 8) stipulates “everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law”. Remedy can also be found in the International Covenant on Civil and Political Rights (ICCPR, Art. 2), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT, Art. 14); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, Art. 2), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD, Art. 6); and the Optional Protocol to the Convention on the Rights of the Child (CRC, Art. 8).

Critics of the State-to-State remedy approach affirm that it fails in creating a right that can be invoked in the international level by any individual. “Obligations under international law are obligations between states [...] and reparations are paid to the injured state not to the individual” (CASSESSE, 2001, cited in PAINTER, 2011, p. 3).<sup>16</sup> But there are alternatives to this approach. The European Convention on Human Rights (ECHR, Art. 13) and the American Convention on Human Rights (ACHR, Art. 25) embrace the possibility that an international court decides that the State should make reparation directly to the individual. The ICHR has applied the principle of repairing the damage to the life plan,<sup>17</sup> when individual's choices are frustrated/violated by third party actions<sup>18</sup> (SCHÄFER; MACHADO, 2013).

In the Brazilian system, when a person is subjected to work analogous to slavery, according to Articles 186 and 187 of the Civil Code, the Labor Justice can determine moral damage as reparation (SÃO PEDRO, 2012). It follows the doctrine of civil responsibility on cases of human rights abuses or violations, which has three main duties: remedial, educational, and punitive. The remedial duty is based on reparation, indemnity, and compensation. Although these words may have similar meanings, in the law framework they fulfill different roles. While the first, reparation, has the purpose to reestablish something that was lost with the violation, the second and the third, are proposed when it is no possible to redress the damage. Indemnity

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<sup>16</sup> CASSESSE, Antonio. *International Law*. Oxford: Oxford University Press, 2001, p. 48.

<sup>17</sup> The Court has already defined compensation for immaterial in the cases Benavides v. Peru (2001), Cabrera v. Mexico (2010), Gelman v. Uruguai (2011), Atala Riffo and Daughter v. Chile (2012) (SCHÄFER; MACHADO, 2013).

<sup>18</sup> The International Criminal Tribunals for Yugoslavia (since 1991) and Ruanda (since 1994) recognized the right of repairing people. However, limited to the restitution of unlawfully taken property (PAINTER, 2011).

is used to situations when is possible to calculate an approximate monetary value to overcome the damage, whereas compensation is more used when it is not possible to calculate the value (SÃO PEDRO, 2012).

In Brazil, there are two forms of remedy for cases of contemporary slavery based on individual and collective moral damage actions. The individual action is focused on the remedial aspect of the law. For example, after the rescue of workers subjected to slave labor, government's Special Group, related to the Ministry of Labor, has to guarantee that the workers will receive, immediately, their labor rights.<sup>19</sup> In addition, the workers have the right to receive three months of unemployment insurance, and since 2015, they can be enrolled in the Bolsa-Família, a cash transfer program focusing on reducing poverty (COSTA, 2009). Yet, the worker can sue the company to try to receive individual moral damage payment.

Besides that, once slavery is considered a serious violation of human dignity – it does not infringe only individual rights, but the whole society –, the Public Ministry of Labor (MPT) can also file a collective moral damage action. While the individual action is focusing on providing indemnity to the worker, the collective aims to restitute to the society the damage caused. Both of them, however, are based mainly on money restitution.

In theory, the money from collective actions should be reverted to a fund manage by a Federal or State Councils (Art. 13º Law 7.347/85) to be used in the combat of contemporary slavery. In practice, the prosecutor (or the judge) has the right to decide the destiny of the collective damage indemnity, which can be local NGO that works with slave cases, or any other institution. In case of non-decision, the money can be sent to the Workers Compensation Fund (FAT), which provides resources to the Unemployment Insurance Program, the salary bonuses and other programs in economic development.

Furthermore, non-judicial measures can be applied. As a matter of fact, most of the agreements between the company that violated human rights and the State are based on extrajudicial instruments, such as the Term for the Adjustment of Conduct (TAC),<sup>20</sup> which is used, among other things, to try to make these to comply with the law.

Non-judicial instruments also provide standards that take a broad understanding on effective remedies. The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations include equal access to justice; adequate, effective and

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<sup>19</sup> It means proportional salary, vacation, 13th Christmas bonus salary, Fund for Guaranteed the Time of Service (FGTS) plus 40% bonus.

<sup>20</sup> Provided in Complementary Law 75/1993, the Term for Adjustment of Conduct (TAC) is an extrajudicial execution by the Ministry of Labor in cases of labor rights violations. This instrument helps to make the repair of the damage faster and to promote the adjustment of the unlawful conduct of the employer. It is also possible to apply TACs in a more pedagogical strategy (ALMEIDA, 2012), such as educational measures to promote human rights.

prompt reparation for harm suffered; and access to relevant information concerning the violation (UNITED NATIONS, 2006). The Guiding Principles on Business and Human Rights also ask for the participation of companies in developing remedy strategies, such as grievance mechanisms<sup>21</sup> to protect against abuses and facilitate the remedy process (UNITED NATIONS, 2011).

Research relating cases of remedy and contemporary slavery are still scarce in the literature. However, there are empirical studies on reparation programs following historical cases of slave labor. For instance, the broad program of moral and material restitution in the case of forced and slave labor<sup>22</sup> during the World War II, in Germany. In 2001, an agreement between Germany's federal government and a group of companies created a € 5.2 billion fund to attend the victims (AUTHERS, 2006; EVZ, 2016). Besides the monetary reparation, to emphasize the symbolic and moral intention, a note of apology attached every check to a former slave laborer signed by Johannes Rau, Germany's President at that time (AUTHERS, 2006). The program did not escape critics because of confusion with eligibility standards and inadequacy of amount paid. For many people, the restitutions did not guarantee satisfaction.

Another example is the case of the 20,000 Korean "Comfort Women", which were used as sex slaves for the Japanese Imperial Army during World War II. In 1988, the survivors started to seek redressing for the harm they suffered (CULLINAN; BRUCE-MITFORD, 2001). Their aim was to make Japan to admit the existence of Korean comfort women, to make a public apology; and to compensate victims and their families. In an attempt to redress, Japan created the "Asian Women's Fund", provided by donations from civilians and private organizations, which has a focus on community rehabilitation and not in individual reparation. Most of the victims did not accept this approach and asked for personal compensation along with an apology. This case shows that ignoring the wishes of victims, by denying personal compensation in favor of community measures, is not be the best strategy to reach remedy.

Both cases related to historical events have in common the fact that the victims were visible to the society. Either because they were organized as a group to search for their rights, the case of the "Comfort Women", or because they were part of a specific group that was targeted, the Jewish, in Germany. It is different from cases of contemporary slavery, where the victims are "invisible" to the public awareness like the case of José Pereira v. Brazil, the first claim on remedy in a case of slavery work in the IACHR (SCAFF, 2010).

...

21 Grievance is understood as "a perceived injustice evoking an individual's or a group's sense of entitlement, which may be based on law, contract, explicit or implicit promises, customary practice, or general notions of fairness of aggrieved communities" (UNITED NATIONS, 2011, p. 27).

22 Here, the definition of 'slave labor' is: "work performed by force in a concentration camp [...] or a ghetto or another place of confinement under comparable conditions of hardship" (AUTHERS, 2006, p. 435).



José Pereira was 17 years old when he fled from slave work conditions in the farm in Espírito Santo, located in Sapucaia, South of Pará. He had been lured to work in the farm with false promises of good payment, and ended up being forced to work under inhumane condition, along with another 60 people (SAKAMOTO, 2004). After exhausting the pledge for reparation in the domestic law, the Human Rights Watch and the Center Rights for Justice and International Law (CEJIL) brought the case to the IACHR. The petitioners alleged that Brazil failed to respond adequately to the complaints regarding slave labor. In 2003, a friendly agreement was signed. Even though the violations were not attributed to State agents, Brazil had to recognize its international responsibility in relation to the case, and to provide a payment of R\$ 52,000 (€ 12,975) to the victim (SCAFF, 2010), among other measures.

#### 4 SEEKING VICTIMS' PERSPECTIVE

There is a common figure among the different approaches of remedy, the premise that it is in the best interest of the victims to have restored the original situation they had before the human rights violation had occurred. Most frequently, however, it is not possible to provide this kind of restitution or it is not enough to repair the harm caused by the violation. In the case of contemporary slavery, it is possible to restore someone's freedom. But does it mean that the principle of restoration was reached? One could argue that to restore workers to the original situation before the violation of human rights occurred could mean to lead them into the same vulnerable conditions that started the problem in the first place. Therefore, to reach remedy in cases of slave labor it is necessary to go beyond the dominant approaches towards a process that offers conditions for social emancipation from the slave labor cycle – vulnerability leading to slave labor, followed by rescue, and the return to the vulnerable conditions.

Having this in mind, seeking workers' perspective is the main route towards understanding which are the challenges that are preventing the effectiveness of the remedy system, based mostly on the State perception on workers "wants and needs". This option is aligned with the assumption that no one has the receipt for social emancipation, which has to be constructed as a collective alternative. To seek workers' perspective means to search for a knowledge that includes suppressed, silenced or marginalized realities product of subjectivity and validate the knowledge born in struggles by those who are resisting the systematic oppression cause by capitalism, colonialism and patriarchy (SANTOS, 1991, 2014). Following Boaventura de Sousa Santos' Southern Epistemologies, the idea is to combat the waste of the workers' experience, turning their voices into an instrument to confront theory and practice of the remedy process, in order to challenge dominant power relations and encourage the creation of rebel subjectivities "against conformist, routinized, repetitive social practice" (SANTOS, 2014, p. 160).

One could argue that this approach could undermine the reliability of the research, as it is a product of the subjectivity of memories. On this matter, it is important to make a reflection.

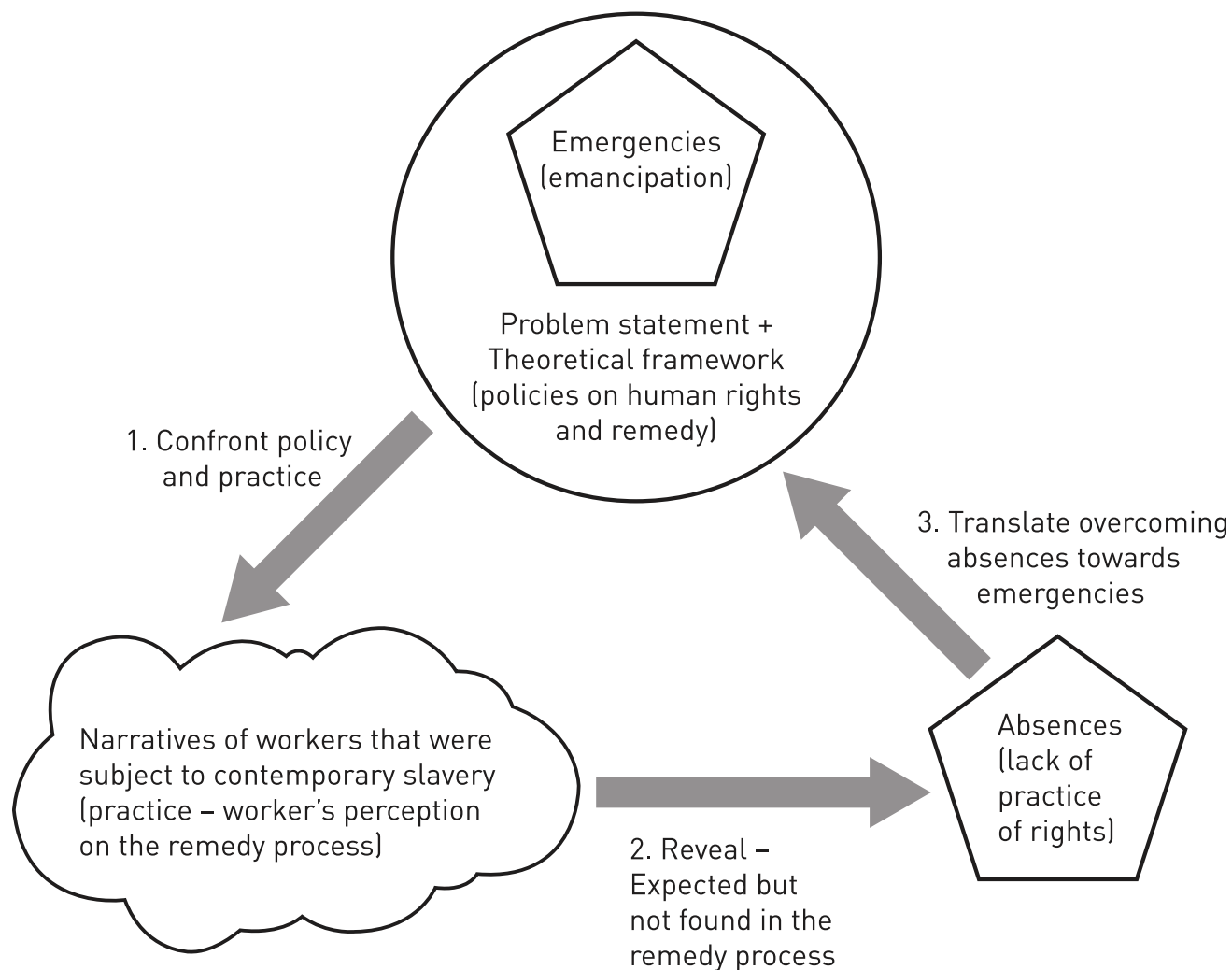
First, Santos works with the premise that social practice and personal experience are practices of knowledge, and although they are not related to science, they cannot be disqualified and wasted. Second, the Western culture has a wide historical experience of contacting other cultures, however, it was based on “colonial contact”, where the knowledge owned by the “other” was treated with contempt. It is time to change this perspective.

Through the voices of workers, it was possible to reveal absences – defined in this article as the lack of practice of rights –, related to what is missing and why is it missing that prevents the policy of remedy to succeed. Following Boaventura de Sousa Santos' Sociology of Absence and Emergency, the aim was to demonstrate that “what does not exist is actively produced as non-existent, as a non-believable alternative, a disposable alternative, invisible to the hegemonic reality of the world” (SANTOS, 2002, p. 246).

To apply this theory, Santos (2002, p. 272) proposed a process of “translation” of knowledge, in another word, he proposed to do an argumentative work that aims sharing the different knowledge and experience. However, Santos does not specify a model to the application of the theory and the translation process. Therefore, for the purpose of this article, the narrative analysis will be built upon an adaptation of Neuman's framework of negative case method, a qualitative data analysis that focused “to systematically examine the absence of what was expected” (NEUMAN, 2014, p. 499) to Santos's theory.

The negative case method is focused on “what it is not there”, which can include different type of evidences: silences, absences, and omissions. The idea is use detailed knowledge on a particular case, for example the workers' experience in the remedy process in the case of Brazil Verde Farm, to confront with what would be expected on the human rights discipline related to contemporary slavery and remedy. The “confrontation” will be made by a process of translation by the researcher, which aims to “create the conditions for concrete social emancipation” (SANTOS, 2002, p. 274). In other words, to propose solutions for the lack of effectivity of the remedy system in Brazil.

This process of analysis is demonstrated in Figure 1. After examining the problem statement, following the premise that Brazil has an internationally recognized system to combat contemporary slavery, I intend to use the narrative of workers as a guiding thread to (1) confront policies of remedy (theories of what is expected in the human rights framework) to the practice (how workers perceived their own remedy process), to (2) reveal the absences (the lack of practice of human rights). Following this, I intend to propose, through a process of (3) translation (an argumentative work) to transform these absences (lack of practice of rights) into emergencies (possibilities of future), pointing out new paths towards social emancipation (SANTOS, 2002, p. 258).

FIGURE 1 — **APPLIED NEUMAN'S MODEL OF NEGATIVE CASE METHOD**

Source: Neuman (2014, p. 503) and Santos (2002).

## 5 THE CASE “BRASIL VERDE FARM WORKERS V. BRAZIL” IN THE ICHR

In March 2015, IACHR filed an application with the Inter-American Court regarding the Case 12.066, “Brasil Verde Farm Workers v. Brazil. The claim was that since 1989 Brazilian agents have conducted inspections of the Brasil Verde farm to check on workers’ conditions, however, despite the irregularities and even slave labor found in the farm, the State failed to guarantee that these crimes would not occur again (ORGANIZATION OF AMERICAN STATES, 2015). Located in Sapucaia, South of Pará State, the Brasil Verde farm belongs to the Irmãos Quagliato Group, a large livestock company that owns eight farms in that region with approximately 200,000 cattle (OAS, 2015; SALOMÃO, 2005).

The slave work in the farm affected mainly men of African descent between the ages of 15 and 40, who came from the country’s poorest states, where there are few work prospects. Workers who managed to escape from the farm reported the existence of death threats, among other violations such as debt bondage system, lack of decent housing, food, and health

care. Although the State did many investigations, which resulted in rescues of the workers and the payment of indemnity, the violations continued occurring over the years.

The IACHR released a report, in 2011, asking Brazil to comply with the law providing adequate reparation, both material and moral, for the violations; investigating claims of workers that disappear; and developing actions to avoid this situation to be repeated. After considering that Brazil had not complied with the recommendations, the IACHR submitted the case to the ICHR. It was the first time that a case of slave labor reached the Court.

I contacted CPT, which is leading the lawsuit together with CEJIL, to check the possibility of interviewing the workers. CPT was very receptive and put me in contact with an agent who worked in Teresina, Piauí's capital. I was invited to participate in a meeting in Barras, with the workers, where CPT would present a summary of the first hearing in the ICHR, and also introduce my project to seek for collaboration. Located 130 km from the State's capital, Barras has 46 thousand people, and a low Human Development Index<sup>23</sup> (HDI) of 0,595 (UNDP, 2016). The city's economy is based on subsistence farming, government's activities and elderlies' pensions.

In the meeting, just a few workers appeared to hear the news. I could observe that they were very anxious with the possibility that the process would be over soon. Most of them have worked in Brasil Verde in the beginning of 2000. I was introduced the Luiz Doca, Diogo, Careca and José Pitanga,<sup>24</sup> who had been working at the same time in the Brasil Verde farm. Later, by intermediation of the workers, I would meet Gonçalo and Conrado.

I visited the workers in a very sensitive moment for the process of concluding the reparation. In the meeting, the CPT agent explained that there was no guarantee that the Court would decide if the Brazilian State would have to pay any monetary reparation to the workers. However, the agent said they were optimistic since from their point of view, Brazil failed to present a plausible defense. Luiz Doca (MENESES, 2016), 58 years old, took the floor to argue: "Why the State decided to rescue the workers then, if there was no slave labor?" Following his statement, the next section will confront the workers' experience with the public policy.

### 5.1 REMEMBERING THE PAST IN THE SEARCH FOR REPARATION

Luiz Doca is a retired "peão de trecho" (literally "pawn in transit"), a rural worker that spent his life from farm to farm cutting up "juquira", that is, some kinds of bushes that prevent the expansion of the plantation fields. Before Brasil Verde, he had spent 12 years on the road. The lawsuit against Brazil has seemed to change his life and also the life of the other workers whom

...

<sup>23</sup> HDI is a measure of achievements of human development related to a longevity, education and income (UNDP, 2016).

<sup>24</sup> In order to respect workers' individuality, I will write only their social names. Their complete names are referenced in the end of the article.



I had the opportunity to talk to in Barras. After 15 years of the rescue, they have been reviving the past as a strategy to search for their rights. Luiz Doca and his companions seemed to be used to repeating their histories in order to support their claim for reparation. I had to be very careful in explaining that my purpose was strictly academic.

While examining the past, the workers' narratives showed converging realities marked by oppressions and silences that seemed to have been normalized. They described their life on the road, the hard work, the difficulties to be paid, the humiliations, and the fear as a "normal" working day practice of the agribusiness. However, the business they know are not the one used to illustrate the Brazilian propaganda worldwide. It is the one that works in the shadows with their own recruiters, the "gatos", agents of the farms that travel to poor areas in search for cheap manpower, with false promises of good payments for temporary positions. When the workers realize that all the promises were lies, it is too late. They are already far from home, without money and vulnerable to all sorts of abuses.

To be efficient, the "gato" is usually someone known by the workers. He needs to show some credibility, since it is in the moment of grooming that the workers firm a non-written contract based, most of the time, only on promises and words. This practice does not seem to be fading away in Barras. All the workers I interviewed affirmed that every week groups of young men are still being groomed to work in areas of agriculture and civil construction. The older workers are used to give tips to the new ones concerning precautions they must have. Diogo (2016), 70 years old, frequently shares his experience as someone that used to go on the road with only promises and dreams of a better life.

Nowadays, the one who wants to leave home has to know whom he is dealing with; and where he is going to. A person cannot leave by chance. Sometimes you think you are going to the right place and end up in the wrong one. You have to check everything very carefully [...] verify the name of the place, who is going by whom, to inform the justice accordingly.<sup>25</sup>

Although it did not mean that they were all in danger, the narratives of the workers show that the grooming for slave labor purpose is still common in their reality. Having this normalization of the recruiting practices in mind, it is possible to infer that there is an absence in the lack of practice of labor rights in the search for work. But how these absences are created? Is it only product of Brazil's negligence? I would say no. It is not a matter of policy or regulation.

...

25 Original in Portuguese: "*Rapaz, hoje em dia pra pessoa sair de casa, tem que saber com quem sai. Saber pra onde é que vai. A pessoa não pode sair mais à toa. Que às vezes você pensa que vai para um lugar certo e vai para um lugar errado. Cê tem que examinar bem direitinho, [...] o nome do lugar, vai levar por quem, vai dar conhecimento à justiça. Você não consegue amarrar assim à toa, sem saber pra onde vai não*" (sic).

The labor rights exist (in the national and international framework) and the workers are entitled to them. Moreover, the access to these rights can be made in the moment of rescue, as I will discuss later.

The un-skilled rural worker seems to be a problem to this model of productivity that disqualifies him as the ignorant, the residual, the inferior, the local, the nonproductive, in the opposite of the productivity, the literacy, and the superiority of the global capitalist citizen of rights. There is a way of including this worker into this model as a disposable asset. But in order to do that, he has to be deprived of the human rights that would guarantee him fundamental dignity. Santos (2010) explains that the logic of “appropriation” of rights is raised behind the tensions between regulation and emancipation outside the mainstream societies. This logic just recognizes the rights of things, human or not human, as a tool to raise profits. Therefore, it was possible to infer that companies rely on State's negligence towards labor rights to operate the contemporary slave market. It is important to notice that the State that neglects workers' rights functions as a double agent, also promoting these rights, as will be shown in the next section.

## 5.2 FACING SLAVERY, RESTORING DIGNITY

The workers described that there was a mix of fear and excitement involved in the experience of being rescued. Luiz Doca said he was surprised when the police arrived, since it was the first time, after he had been working in farms for 12 years, that something like that had happened. When he saw the guns, he thought that everybody was going to die, but then the police explained that they were there to verify a complaint and the ones that wanted to leave could go, but they also could choose to stay. Luiz Doca (MENESES, 2016) explained their decision: “Who would want stay in a place like that? Everybody left”.

Luiz Doca recognized that the rescue was only possible because of the action of one worker, José Pitanga, who had escaped. José Pitanga, 45 years old, who has a disability that prevents him to bend one of his knee, complained that the daily payment for the work, approximately R\$ 0,75 (€ 0,2), was far from the good salary promised by the “gato”. The work conditions were not as good as well. This perception, however, is not the same for all workers. Gonçalo, 58 years old, for example, said the problem was only the low payment. Before going to Brasil Verde, he had worked twice in the sugarcane plantation in the South of Brazil. When I asked about the work conditions, he said: “Nothing unusual. It was good” (SOUZA G., 2016). He recognized there were threats, but he was used to it.

José Pitanga, however, after nine days working under these conditions, decided to stop, and call other workers to protest. After being threat with violence, Pitanga (SOUZA J., 2016) decided to run away from the farm with another worker:

[...] the other workers were afraid. When it was five in the morning we fled. Around eleven thirty (or noon), we manage to reach the road. But after a while, we saw the farm's

car. We decided to walk into the woods until reaching the city. We had only our body clothes. Through the woods we walked, and walked, and walked, always afraid of jaguars. There were a lot of jaguars in that area. But I do not worst to die. The threes in Pará are tall and thick. We climbed [when there was a sign of jaguar]. We slept in a tree that had a hole where a person could fit stand. One had to be brave. We spent three days and three nights until we reached Marabá (a large city in Pará, where he could find the police).<sup>26</sup>

Important to notice that José Pitanga used the word “flee” (fugir, in Portuguese) to explain how he left the farm. Nowadays, nobody “flees” or “escapes” work, people are fired from it, quit, or at the most, abandon the work. The word “flee” has a historical connotation. In the 19<sup>th</sup> century, cases of “fugitive slaves” that fled from the farms were common. Among the workers, people that escape are seen with some contempt, as the ones that do not want to pay their debts or simple do not want to work. Luiz Doca, for example, is proud to say that he has never escaped. He sees the work as a matter of honor, despite the bad experience it is providing. The other workers I have interviewed also seem to share his perspective. It shows a naturalization of the oppression. One could wonder if it is possible to overcome ideas that are so internalized in the workers’ mind. I cannot guarantee it is, but also would not dare to say it is not. The case of Pitanga will explain why I rather follow a more optimistic approach.

José Pitanga showed some characteristics that Boaventura dos Santos Souza (2014) call “rebel subjectivity”, which made him challenge situations, against conformist, routinized behavior, that others would comply with. Differently from other workers, that were used to live on the road, it was his first time in a farm so far from Barras. In front of what Pitanga believed was a death threat to him and to his co-workers, he decided to escape and ask for help. The climax of his action was the rescue by government’s agents.

Careca, 58 years old, celebrated the rescue. He was the farm cook, and travelled to Brasil Verde with his wife and a four-year-old daughter. He said that the work conditions for him and his family were not so bad. They had their own tent and a signed contract. The problem was the frequent humiliations that he saw other workers suffer. He also said that the police arrival was a scary moment. “Imagine a person you do not know arriving and holding guns. Some people run to the woods with fear” (SILVA, 2016).

...

26 Original in Portuguese: [...] os outros tudo com medo. Deu umas cinco da manhã e fugimos. Quando deu umas onze e meia, doze horas, que nós saímos na pista. Quando nós entramos na pista, demorou um pouco e passou um carro da fazenda. Aí caímos para o mato de novo. Do mato fomos até chegar numa cidade, só com a roupa do corpo. De lá nós caímos para o mato de novo, andemo, andemo, andemo, com medo de onça. Tinha onça demais. Mas eu não presto de morrer. Que os paus do Pará são grandes, né, são grosso. Subia [quando tinha medo de onça]. Chegemos a dormir num pau lá que tinha um buraco dentro que cabia uma pessoa em pé. Tem que ter coragem. Foi três dias. Três dias com três noites. Quando nós chegemo perto de Marabá (cidade no Pará, onde ele procurou a polícia) (sic).

This narrative is common among the workers. The police, as the agent who enforces the law seems not to be trusted – not entirely anyway. It is not clear, however, if the workers are afraid of the police acting on behalf of the State or the farm owners. In all interviews, relatives of workers contested me about my motives for doing this research. They seemed to be afraid. I was even accused of being a spy, due to a problem of communication between the CPT and CEJIL that misled some workers to believe that I could be representing the farm. Careca (SILVA, 2016) explained the situation: “The one who was threatened before has fear”.

It seems like all the workers and their relatives know someone that disappeared while on the road. It is the case of Dona Moça, Luiz Doca's wife. She lost her first husband and her older son to “farms”. She does not know what really happened. They just left for a job opportunity and never returned. Dona Moça never went to the police, but she still hopes to see her son again. She explained that it is not an isolated case (SOUZA M., 2016): “There are many, many people who disappear like that and never return”.

The moment of fear was replaced with joy when the workers understood that the police was there to rescue them. This is how Diogo (2016) defined his experience: “When the police arrived, I got courage. I got a new soul”. Diogo's “new soul” can be represented by the moment of the workers' dignity was restored by the enforcement of the law. They were no longer disposable people, they were citizens of rights. However, this was also the moment were many workers have to face the concept of slavery labor for the first time. José Pitanga (SOUZA J., 2016) said that in the rescue he understood the things he had heard in the farm.

When we arrived in the farm, some people that we did not know (because there was a lot of different people in the farm) said: ‘the slaves just arrived’. [I thought] what are they talking about? Slave labor ... who are the slaves? I do not have an iron chain in my feet. [Later] a manager swore to tide us with a chain in the feet to makes work. There was a guy from Maranhão, I think, a short guy that said: ‘You can put a chain in the others, but if you try to put it on me, I will take your head off with this sickle. If you put a chain on me I will kill you’. The manager laughed. He was walking around with a car full of guns.<sup>27</sup>

...

27 Original in Portuguese: “Quando nós chegamos lá dentro... um pessoal que a gente não conhecia, tinha muita gente diferente lá... aí teve um que disse assim ‘os escravos já chegaram’. Que negócio é esse? De trabalho escravo... que trabalho escravo? Não saí amarrado daqui pelo pé, corrente amarrada no pé [...] E lá juraram mesmo de amarrar nós. Juraram de botar corrente nos meus pé para trabalhar. Esse gerente jurou de botar acorrentado. Teve até um que disse, parece que era do Maranhão, um sujeito meio baixo. ‘Você pode colocar corrente nos outros, só que se você colocar em mim eu tiro seu pescoço com essa foice. Se você colocar a corrente em mim eu lhe mato’. Ele achou foi graça, o gerente. Andava com o carro cheio de arma”(sic).



It is interesting to notice the case of another worker, Conrado, 50 years old. He heard that there was someone interviewing about Brasil Verde farm and decided he wanted to give his testimony. He worked in the farm in the late 1980, and would like to know if he could be enrolled in the process. After I explained that he should talk to someone from CPT, he told me that the work in Brasil Verde farm was not bad. Conrado spent nine months in the farm and despite the humiliations, it was good for him. "These farms are all the same. Some of them are good, others bad. But none of them are really good" (CRUZ, 2016). He only felt like doing slave work in his last job. The company Arthur Emilio de Carvalho Oliveira, from Maranhão, hired him in 2011 as a rural worker for a minimum salary a month. After six years and a serious accident that almost cost his life – a house's wall that was being demolished fall off his head –, he felt that the indemnity he received after being fired was not enough. He wants reparation from the company that treated him as "slave". This shows there is a thin line between the perception about slave labor and irregular works.

After these narratives, it is possible to infer that there is a paradox in the moment the workers are rescued by the government: they have to be recognized as slaves to have their rights guaranteed by the law. Before that, they were invisible for justice, working in a system that operated in the shadow of the State's negligence and companies' greed. However, this process of restoration of rights seems not to be enough to guarantee the dignity once lost.

Labeling the workers as a victim of slave labor can free them of the exploitation of the body; however, it also reveals another form of domination that can lead to the naturalization of differences. Here the absence in the lack of practice of rights is produced under the form of an insuperable, because natural, inferiority of the worker. In other words, after being classified as a slave, the worker seems not to completely overcome this inferiority. The lack of justice to the perpetrators and solution of cases of enforced disappearance just seem to support this idea.

The echoes of this absence affect not only the worker, but also their family. Although it has been 15 years of the rescue, they are still living in fear of death, represented by what seems to be an "insuperable" lack of security (social, economic and physical) brought by the ghosts of all the unresolved issues of the period they were under the slave system. This shows a lack of practice of several human rights, starting to the right to life and right to security, that jeopardize the worker's dignity even after the rescue.

### 5.3 AFTER FREEDOM: PERCEPTION ON WORKERS' "WANTS" AND "NEEDS"

The workers interviewed confirmed they have received an indemnity related to their labor rights after the rescue. However, the value was considered by them as a token, something to please them instead of their labor rights. There is no consensus among the workers about the exact value they have received, some of them talked about a minimum salary, which by the time they were released was R\$ 151,00 (€ 37) (TRT18, 2016). Luiz Doca (MENESES, 2016) explained his situation:

As I was telling you, it was 12 years and I do not have, as to say, a sandal that I bought with the money I won in the farms. What I have today, thanks to God, I got in here [Barras] working in my own [subsistence] crop. This thing that people believe to go around the world to make money is a tale. It does not exist. It is just a tale that the men have.<sup>28</sup>

After freedom, some workers returned to the “gato” system; others found daily low paid jobs in the small farms in Barras. In both cases the workers still struggle to overcome vulnerabilities. That is why the lawsuit against Brazil is seen as a possibility to improve their life conditions. José Pitanga, Gonçalo and Careca expected to earn some money with the process. While the two first dream to build a house with the reparation money, the later wants to use the money to pay for his health treatment. They explained that there was an attempt of agreement made by the government, such as the one in the case José Pereira, in the IACHR. However, the amount was considered not enough. Some workers talked about R\$ 5,000 (€ 1,247), other in R\$ 10,000 (€ 2,495). José Pitanga wants R\$ 15,000 (€ 3,742).

Diogo and Luiz Doca, on the other hand, told me that if someone had asked them, they would prefer to receive land, and the subsidies to produce, instead of money. Diogo wants to buy some land and abandon the model of leased areas that he uses to grow his small crop. Luiz Doca (MENESES, 2016) also has ambition: “Today I have a small area, but it is not enough. I want 20 hectares to work and raise my animals. If you have a land, you have something to grab into in times of need. If I won R\$ 5,000, R\$ 10,000, I would spend it.”

The only one that brought different aspects of reparation was Dona Moça. She hopes that winning the process could help the workers to restore their self-esteem. Dona Moça seems worried about a different aspect of workers “wants and needs”: the possibility to “empower” them to heal. It seems that her goal is to challenge her own reality: “The destiny of the poor is to be afraid of everything, afraid that something could be complicated, afraid to denounce a person and to be in danger because of it” (SOUZA M., 2016).

Dona Moça believes she is fighting for justice. However, it is interesting to notice that her concept of justice is focused only on the omission of the government. I asked the workers what they think about the company’s role and the answer was always the same: they do not think about it, mostly because they fear the farm owner. In the perception of the workers, the relationship between justice and punishment is focused only on the “gato’s” (and other farm workers’) responsibility for the exploitation.

...

28 Original in Portuguese: *Como eu tava lhe dizendo... foram 12 anos... e eu não tenho um chinelo, por assim dizer, de fruto que eu ganhei de tal fazenda, não. O que tenho hoje, graças a Deus, é aqui dentro, trabalhando, fazendo minha roça. E aquele negócio de passar aí no mundo para ganhar dinheiro é só um fado, porque não ganha essas coisas, não. É só um fado que o cabra tem (sic).*

One could wonder if there is something more to do, beyond the juridical sphere, in order to fulfill the workers' "wants" concerning the reparation process. It seems that the workers have a subaltern role in the process of getting remedy, which is related to a characteristic of the justice system. Their access to justice is made by intermediaries able to pursue the law in the name of the "victims". It shows an absence in the lack of the practice of the right to participate. This non-existence appears in the form of ignorance and lack of culture of the workers to have the central role in the decision regarding to their lives. Their "needs" are discussed in different spheres, where their voices not always can be heard. For example, in the first hearing in the ICHR, there were specialists in contemporary slavery in Brazil making the technical assessment on behalf of the workers. According to CPT, there was the intention to take some workers to the hearing, but in the beginning, the Court said it was not necessary. Only later, some workers would have their voices heard. The lack of participation can reveal that the workers' "wants" are not priority, on the contrary, it is an assumption of "needs" that are guiding the process of remedy.

In October 2016, the Inter-American Court of Human Rights acknowledged in a historical decision that Brazil violated rights established in several articles of the American Convention on Human Rights, such as the prohibition of slavery and servitude; guarantee the physical, psychological and moral integrity of the person; and the right to personal liberty (OLIVEIRA, 2017). Although human dignity has no price, the ICHR has calculated an unprecedented amount of reparation to be paid to the workers. Each of the 85 workers who were subjected to slave labor in the Brazil Verde Farm, and who were rescued during the inspection at the farm on March 15, 2000, will receive 40,000 dollars (about R\$ 120,000) for repair. Another 43 workers rescued during an inspection on April 23, 1997 will receive \$ 30,000 (about R\$ 90,000). Brazil cannot appeal anymore.<sup>29</sup>

## CONCLUSION

Brazil was the last country in the Western world to abolish slavery. The echoes of the lack of reparation for the free ones are still visible in its society. Being either Black or Brown in Brazil means to be more likely to suffer with violence, poverty, lack of quality in education, poor access to health, lower income and job opportunities. Therefore, it does not surprise that this population is the target of the contemporary forms of slavery. In order to overcome past mistakes, Brazil created a system to protect people from this new face of exploitation. However, the country's remedy measures seem not to be enough to guarantee that people will overcome the vulnerabilities that are leading them to slavery.

...

<sup>29</sup> Until September 2017, the money has not been paid yet.

In order to understand the challenges that are preventing the effectiveness of the remedy system in Brazil, this article relied on the narratives of people that were subject to slave labor in the case of Brasil Verde Farm. The reason for choosing the workers narratives as the main source of information is that contemporary slavery is a complex phenomenon that does not fit into one perspective, and although studies on remedy and slave labor are still scarce, one feature stands out: the lack of the victims' point of view.

As mentioned before, to seek workers' perspective means to search for a knowledge that includes suppressed, silenced or marginalized realities product of subjectivity and validate the knowledge born in struggles by those who are resisting the systematic oppression. Boaventura de Sousa Santos gave the theoretical framework to understand this reality and to reveal the "absences" in the "lack of practice of rights".

The narratives of workers from Barras showed that the main difficulty associated with pursuing reparation are related to the existence of public policies based only on the assumption of "wants and needs", regarding mostly labor rights, without the workers' participation. The moment of rescue is where the workers have restored their labor rights. However, the remedy (labor indemnity) offered by the government seems to follow a literal interpretation of the principle of restoration, only good enough to restore the workers to the same vulnerable conditions that lead them to the slave labor. The workers I had the opportunity to talk seem to be aware of the limitation of the indemnity, no wonder they call it a "token", something to please them instead of their labor rights. However, the extent of workers' awareness about their rights to remedy is very limited. I noticed that there are misunderstandings regarding the difference between condition analogous of slavery and irregular work. This lack of information about their rights is an obstacle to pursue remedy. Despite the government's action to release the workers, their access to justice relies on NGOs and local Unions information.

There are no spaces for the workers' voices to be heard, which raises a question about who should be responsible for creating these spaces: the State, the perpetrator, the NGOs, the community, the workers? In addition, once created, is the State ready to respect the victims' "wants"? For example, although the workers from Barras seem happy with the possibility to earn money, who can guarantee that the amount will promote any significant change of their vulnerable situation? When I asked what would be effective reparation in their opinion, some of them said they would prefer to receive land.

Therefore, any reparation measure that intend to promote social emancipation have to deal with the absence of right to participation, to security, to adequate standards of living, to health, to adequate housing, to education, and also right to land. These absences are hidden behind policies that exhibit Brazilian promotion of human rights, such as the proposals to offer professional education, and even agrarian reform to facilitate the reintegration of the workers that can be found in the National Plans to Eradicate Slave Labor.

These proposals have been effective only in the paper and I wonder if they have any chance to succeed without the workers' participation anyway. I believe further investigations



would be appropriate in order to understand the effectiveness of remedy policies in broader cases of study, reflecting not only the male rural workers' perspective but also the one of their families, women, indigenous people, children, immigrants, refugees, among others, that were enslaved in different industries. There is an entire field relating perspectives of victims on remedy measures in cases of slave labor to be explored. However, by now, it is already possible to do an argumentative exercise showing that the workers' narratives pointed out opportunities to transform absences (lack of practice of rights) in emergencies (possibilities of future) to reach social emancipation.

For example, although most of the workers to whom I have talked showed fear of the farmer owner, they do not seek revenge. It shows an opportunity to create spaces of conciliation between the company and the community that they affected, which could help reduce the feeling of lack of security. The idea is to go beyond the monetary aspects of reparation, to emphasize the symbolic and moral intent. Nowadays, despite some companies' names can be displaced in the Dirty List, the national instrument to name and shame enterprises that were found with slave workers, companies do not have to public recognize their violation. They just have to pay for it. Having companies recognize their acts and public apologizing the workers that suffer the exploitation would be an important action to restore really restore people's dignity.

Another relevant point is that there is a relation between the concentration of land and the contemporary workers. The people I had the opportunity to interview are mostly landless rural workers obliged to find job in different areas of Brazil. Although it is not possible to affirm that all workers search for land as remedy, it is true that some of them see a relation between land and security. Reparation for slave labor focused on the agrarian reform could open to the possibility to break with the cycle of slave work. However, the policy must be consistent and not based only on land transfer. With a proper structure of production, the worker can be a valuable asset to the local market. In São Paulo, for example, a law obliges schools to buy food only by local producers.

In order to do that, an important measure is the urgent implementation of the Constitutional Amendment 81/2014 (also known as PEC of Slave Labor) that provides the rules for the confiscation of properties where the crime of slave labor has been perpetrated, and its allocation to agrarian reform and urban housing programs. This instrument would discourage farms to use slave labor, sending a message that Brazil do not tolerate this gross violation of human rights.

## ACKNOWLEDGEMENTS

*This research was possible thanks to the Erasmus Mundus scholarship. The author declares that there is no conflict of interest regarding the publication of this article.*

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### **Interviews with rural workers**

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